

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

---

August 11, 2004

---

GSBCA 16410-RELO

In the Matter of EDWARD I. WEXLER

Edward I. Wexler, Atlanta, GA, Claimant.

Michael R. Shutter, Chief, Civil Law Division, Office of the Staff Judge Advocate, Headquarters Warner Robins Air Logistics Center (AFMC), Department of the Air Force, Robins Air Force Base, GA, appearing for Department of the Air Force.

**DANIELS**, Board Judge (Chairman).

When most Americans buy residences, they finance the purchases by borrowing money for which the residences themselves serve as collateral. When Edward I. Wexler was transferred to Atlanta by his employer and bought a home there, he financed the purchase by borrowing money for which another property owned by him served as collateral. In this decision, we hold that Colonel Wexler's employing agency must reimburse him for expenses he incurred in taking out that loan, since the expenses are similar in kind and amount to those for which reimbursement is specifically made appropriate by the Federal Travel Regulation (FTR).

## Background

In October 2003, the Georgia National Guard transferred Colonel Wexler<sup>1</sup> from Savannah to Atlanta. The colonel, who must retire in May 2006, chose to retain his house in Savannah, where his wife continued to live. He bought a house in suburban Atlanta and paid for it with money secured by taking out a home equity loan on his Savannah residence. Colonel Wexler asserts, without contradiction by the Department of the Air Force (which is the responding agency in this case), that the cost of taking out the home equity loan was about one-third the cost he would have incurred if he had taken a traditional mortgage on the property in suburban Atlanta.

---

<sup>1</sup>As Director of Human Resources of the Guard, the claimant holds a dual status appointment as both a federal civilian employee and a member of a selected reserve. See 10 U.S.C. § 10216 (2000); Dennis Nielsen, GSBCA 15754-RELO, 02-2 BCA ¶ 31,922.

Colonel Wexler asked to be reimbursed for the various charges imposed on him by the bank which granted him the home equity loan. These charges were for fees for title examination, recording, appraisal, and flood certification; a Georgia mortgage fee; and an intangible tax. The Air Force denied reimbursement on the ground that all of these charges concerned a loan on the home at the employee's old duty station, not on the newly-purchased home at his new duty station. Colonel Wexler objects to this determination, maintaining that he incurred the expenses for the express purpose of financing the purchase of the latter residence.

### Discussion

The Air Force believes that Colonel Wexler's situation is novel. It is not. The General Accounting Office (GAO),<sup>2</sup> our predecessor in settling claims for relocation expenses by federal civilian employees, considered similar circumstances on several occasions. The leading case is Arthur L. Kerns, Jr., 60 Comp. Gen. 650 (1981). There, the employee's costs of taking out a second mortgage on his residence at his old duty station, for the purpose of securing sufficient funds to purchase a residence at his new duty station, were held to be reimbursable. GAO noted that reimbursement of expenses connected with the mortgage transaction were not specifically precluded by either statute or regulation. It determined that the transaction was essential to the purchase of the residence at the employee's new duty station and concluded that the transaction was "a part of the 'total financial package'" involved in the purchase.

Kerns was expressly endorsed, and its reasoning extended, in decisions which quickly followed. In Leland D. Pemberton, B-200167 (Sept. 21, 1982), GAO expressly overruled a decision it thought might be considered in conflict with Kerns. In James R. Allerton, B-206618 (Mar. 8, 1983), Charles A. Onions, B-210152 (June 28, 1983), and Marshall L. Dantzler, 64 Comp. Gen. 568 (1985), an employee's costs of taking out a new mortgage on his residence at his old duty station for the purpose of financing the purchase of a home at his new duty station were held to be reimbursable, again on the basis that the loan was "part of the total financial package" for the purchase or "an integral part of the financing of the residence at [the] new duty station." By 1985, then, the rule was clearly established.

In our view, GAO's conclusion was correct as to the reimbursability of these costs, though the reason for it was incompletely expressed. Application of fundamental principles for analyzing laws buttresses GAO's conclusion. A statute must be interpreted to give effect to the purposes Congress sought to accomplish in enacting it. Candle Corp. of America v. United States International Trade Commission, 374 F.3d 1087, 1093-94 (Fed. Cir. 2004) (citing Jones v. R. R. Donnelley & Sons Co., 124 S. Ct. 1836, 1842 (2004), and Johnson v. United States, 529 U.S. 694, 710 n.10 (2000)). In 1966, Congress authorized the payment of transaction costs incurred by transferred employees in selling residences at old duty stations and buying residences at new duty stations. Pub. L. No. 89-516, § 2, 80 Stat. 323, 324 (1966). The principal purpose of this and other changes to the Administrative Expenses Act of 1946 was to "provid[e] additional benefits and allowances, so that employees will not

---

<sup>2</sup>This agency has been known since July 7, 2004, as the Government Accountability Office. Pub. L. No. 108-271, § 8, 118 Stat. 811, 814 (2004).

have to incur financial losses when transferred at the request of the Government." S. Rep. No. 89-1357 (1966), reprinted in 1966 U.S.C.C.A.N. 2564, 2565. The Senate committee report on the legislation quoted approvingly this further explanation of the law's purpose:

If the Government expects to attract, retain, and develop top-quality people, it must provide, in addition to pay, the kind of working conditions necessary to achieve those sound objectives. . . . It is not only a question of fairness to employees, it is a matter of prudent administration to protect the Government's investment in its skilled manpower by paying the legitimate costs of transfer.

Id. at 2566-67.

Just as a statute must be understood to give meaning to its purposes, a regulation must be understood to harmonize with those purposes. R. & W. Flammann GmbH v. United States, 339 F.3d 1320, 1324 (Fed. Cir. 2003) (citing United States v. Vogel Fertilizer Co., 455 U.S. 16, 26 (1982)). The FTR's details fleshing out the statutory mandate for reimbursement of a transferred employee's real estate transaction expenses (now codified at 5 U.S.C. § 5724a(d) (2000)) must consequently be read to be in accord with the purposes quoted above. GAO's conclusion as to reimbursability of expenses of the kind incurred by Colonel Wexler is right because it interprets the FTR provisions in a way which requires the Government to pay employees' legitimate costs of transfer, thereby minimizing financial losses that employees may incur as a result of their relocations and helping to protect the Government's investment in its skilled manpower. Cf. David A. Waag, GSBCA 15221-RELO, 00-1 BCA ¶ 30,891 (interpreting FTR provision defining "household goods" to achieve a rational result); Gordon D. Giffin, GSBCA 14425-RELO, 98-2 BCA ¶ 30,100 (interpreting Department of State Standardized Regulations and FTR provisions defining "temporary quarters" to like effect).<sup>3</sup>

In the Kerns, Pemberton, Allerton, Onions, and Dantzler decisions cited above, GAO made clear that even though certain of a transferred employee's transaction costs are generally reimbursable, particular items of those costs are reimbursable only if they are allowable. By "allowable," GAO meant that the costs must be similar in nature and limited in size to the kinds of costs which are specifically made reimbursable by the FTR. We consider this a prudent reading of the regulation and adopt it. The charges Colonel Wexler

---

<sup>3</sup>We note that GAO applied its reasoning only to transactions involving ownership of the employee's residence at his old duty station. It denied reimbursement for expenses one employee incurred in transferring to the seller in partial payment for a residence at the new duty station, title to a home in which he had lived several years earlier. Roger L. Flint, 62 Comp. Gen. 426 (1983). Similarly, GAO denied reimbursement for expenses another employee incurred in obtaining money with which to buy a residence at the new duty station by assigning his interest in a mortgage he owned which was secured by his former residence at his old duty station. Kenneth C. Barnum, 65 Comp. Gen. 157 (1985). The Board adopts GAO's decisions regarding employees' relocation claims only when it finds them persuasive. We need not decide today whether to follow these particular decisions because Colonel Wexler's claim does not involve a transaction involving something other than ownership of a residence at his old duty station.

incurred in taking out a home equity loan on his old residence were fees for title examination, recording, appraisal, and flood certification; a Georgia mortgage fee; and an intangible tax. All of these charges are reimbursable under the FTR. 41 CFR 301-11.200(b) (2003) (appraisal fee), .200(d) (recording fee), .200(e) (title examination fee), .200(f)(4) (mortgage fee), .200(f)(6) (intangible tax, a charge similar to a mortgage or transfer tax), .200(f)(12) (flood certification fee, an other customary expense of sale). Nor is any of these items greater in size than the amount which is customarily charged in Atlanta, Georgia. The Air Force focuses on one of them, the intangible tax, which it assumes is "a personal property tax on the value of the equity within the Savannah home." Rather than guessing, the agency should have researched the law. If it had, as Colonel Wexler has done, it would have learned that an intangible recording tax is imposed by the State of Georgia on every person who executes an instrument involving a long-term note secured by real estate. The tax is at a prescribed rate, which is the rate at which the charge on Colonel Wexler was calculated. Ga. Code Ann. § 48-6-61 (2003).

### Decision

Colonel Wexler is entitled to be reimbursed for all costs claimed relating to his taking out a home equity loan on his residence at his old duty station in Savannah in order to secure funds with which to purchase a residence at his new duty station in Atlanta.

---

STEPHEN M. DANIELS  
Board Judge